



Department of Energy
Washington, DC 20585

October 18, 2019

The Honorable Adam Schiff
Chairman
House Permanent Select Committee on Intelligence
Washington, D.C. 20515

The Honorable Eliot L. Engel
Chairman
House Committee on Foreign Affairs
Washington, D.C. 20515

The Honorable Carolyn B. Maloney
Acting Chairwoman
House Committee on Oversight and Reform
Washington, D.C. 20515

Dear Committee Chairs:

I am responding on behalf of the Department of Energy to your October 10, 2019 letter and subpoena to produce documents and communications in the custody, possession, or control of the Department related to ten categories of information by October 18, 2019. The stated purpose for the demand is the House “impeachment inquiry.”

As the Supreme Court has long recognized, a Congressional committee cannot exercise the investigative power of the full House of Representatives unless it has that power through proper delegation.¹ In contrast to historical precedent, the House has neither expressly adopted a resolution authorizing an impeachment investigation nor delegated impeachment authority by rule.² By failing to validly authorize the impeachment inquiry, the House apparently seeks to investigate conduct of an impeachable officer pursuant to the legislative power—not the impeachment power of the House. The Department reiterates the White House Counsel’s concern that blurring the distinction between Congress’ legislative and impeachment powers violates separation of powers.³

¹ *United States v. Rumely*, 1953, 345 U.S. 41, 42-43 (1953).

² See H. Res. 6, 116 Cong. (2019) (containing no reference to impeachment).

³ Letter from Pat A. Cipollone, Counsel to the President, to Hon. Nancy Pelosi, Speaker, House of Representatives et al., (Oct. 8, 2019).



Even if the inquiry was validly authorized, much of the information sought in the subpoena appears to consist of confidential Executive Branch communications that are potentially protected by executive privilege and would require careful review to ensure that no such information is improperly disclosed. Furthermore, as a practical matter, given the ten categories of information sought, some with numerous subparts, the time and effort required to collect, review, and produce responsive, non-privileged documents is not feasible within the short time afforded to comply with the subpoena.

Additionally, the Department does not accept the claim that “failure or refusal to comply with the subpoena, including at the direction or behest of the President or the White House, shall constitute evidence of obstruction of the House’s impeachment inquiry and may be used as an adverse inference against you and the President.” There is no basis to this claim, as invoking reasonable defenses to a subpoena or privileges held by the President cannot be considered under any rational basis to be acts of obstruction or used as the basis for an adverse inference. The rule of law and fundamental notions of fairness protect the assertion of these legal rights.

Pursuant to these concerns, the Department restates the President’s position: “Given that your inquiry lacks any legitimate constitutional foundation, any pretense of fairness, or even the most elementary due process protections, the Executive Branch cannot be expected to participate in it.”⁴ Therefore, without waiving any other objections to the subpoena that the Department may have, the Department is unable to comply with your request for documents and communications at this time. However, the Department remains committed to working with Congress on matters of mutual importance conducted in accordance with proper authorizations and procedures.

Sincerely,



Melissa F. Burnison
Assistant Secretary of Energy
Congressional and Intergovernmental Affairs

Cc: The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Michael McCaul, Ranking Member
House Committee on Foreign Affairs

The Honorable Jim Jordan, Ranking Member
House Committee on Oversight and Reform

⁴ *Id.*